

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

DUWAYNE DANIELSON  
JEAN DANIELSON

BKY Case No. 03-61601 DDO  
Chapter 13

Debtor(s).

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**NOTICE OF HEARING AND  
MOTION FOR DISMISSAL**

Michael J. Farrell, Chapter 13 Trustee, hereby moves to dismiss the above-entitled Chapter 13 case.

1. The Court will hold a hearing on this motion at 10:00 a.m. on October 26, 2004 in Courtroom 2 – 2<sup>nd</sup> Floor, 118 South Mill Street, Fergus Falls, Minnesota, 56537.
2. Any response to this motion must be filed and delivered not later than 10:00 a.m. on October 21, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 15, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
3. The Debtor commenced this case by filing a voluntary Chapter 13 petition on December 29, 2003. This case is pending before this Court.
4. The Court has jurisdiction pursuant to 28 U.S.C. § § 157 and 1334. This motion is brought pursuant to 11 U.S.C. §1307, Bankruptcy Rule 1017 and Local Rule 1017.
5. The Debtor's filed a modified plan with the Court on February 24, 2004. The order confirming that plan was signed on February 24, 2004. In paragraph 11 of the Court approved plan, it states "Debtors will submit all tax refund checks to the Trustee throughout the duration of the Plan, along with copies of their tax returns." The Trustee has sent two written reminders regarding the tax returns but, to date, he has not received a response. On May 13, 2004, the Trustee received a Minnesota state tax refund check in the amount of \$720.00 but has not received a copy of the state income tax return. Also, without a copy of the Debtors federal income return, the Trustee is unable to determine if, in fact, the Debtors received a federal tax refund which has not been turned over to the Trustee.

**WHEREFORE**, the Trustee requests an order as follows:

- (A) Dismissing the above entitled Chapter 13 case; and
- (B) Granting any other relief the Court deems just and proper.

Dated: September 20, 2004

/s/ Michael J. Farrell  
Michael J. Farrell, Standing Trustee  
PO Box 519  
Barnesville, MN 56514  
(218) 354-7356

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The undersigned, being an employee of the standing Chapter 13 Trustee, declares that on the date indicated below, I served the following:

Notice of Hearing and Trustee's Motion to Dismiss  
and Unsworn Declaration of Proof of Service

Upon each of the entities named below, by mail (unless otherwise indicated below) by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid, and depositing same in the post office at Barnesville, Minnesota, addressed to each of them as follows:

**Debtor(s):**

DUWAYNE DANIELSON  
JEAN DANIELSON  
BOX 175  
GLYNDON, MN 56547

**Debtor's Attorney:**

BRUCE L. MADLON  
PO BOX 9693  
FARGO, ND 58106-9693

**Additional Copy(s) addressed to:**

SHERMAN ACQUISITION LP  
C/O RESURGENT CAPITAL SERVICES  
PO BOX 10587  
GREENVILLE, SC 29603-0587

UNITED STATES TRUSTEE  
1015 U.S. COURTHOUSE  
300 W. 4<sup>TH</sup> ST.  
MINNEAPOLIS, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: September 20, 2004

/s/ Belinda D. Kurtz  
Belinda D. Kurtz  
Chapter 13 Office

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This matter came before the Court on October 26, 2004 at 10:00 a.m., or as soon thereafter as could be heard, on a motion by the Chapter 13 Trustee to dismiss this case. The appearances are as noted on the record. The court made its findings and conclusion on the record. Based on the Local and Federal Rules of Bankruptcy Procedure, it is

HEREBY ORDERED:

That this Chapter 13 Case is dismissed.

Dated: \_\_\_\_\_

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Judge Dennis D. O'Brien  
U.S. Bankruptcy Judge